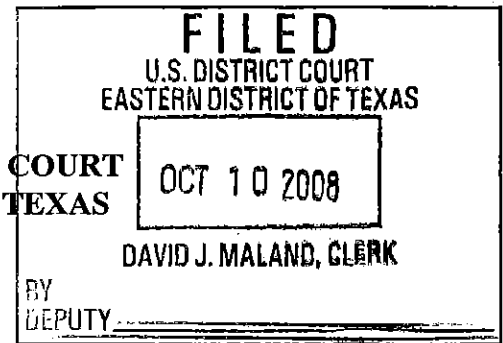


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**



UNITED STATES OF AMERICA

v.

MICHAEL DUANE JOHNSON

§
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§

CASE NO. 4:01cr32(4)

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on October 7, 2008 to determine whether the Defendant violated his supervised release. The Defendant was represented by Robert Arrambide. The Government was represented by Heather Rattan.

On March 28, 2002, the Defendant was sentenced by the Honorable Paul Brown, United States District Judge, to 57 months imprisonment, followed by a 3-year term of supervised release for the offense of Conspiracy to Manufacture, Distribute or Possess with Intent to Distribute or Dispense Cocaine Base and Distribution of Cocaine Base (Crack). On July 29, 2005, Defendant was released from custody and ordered to commence service of a 3-year term of supervised release. That term of supervised release was revoked on August 22, 2006, and Defendant was sentenced to 12 months imprisonment followed by an additional 24-month term of supervised release. The new term of supervised release started on May 23, 2007. On July 27, 2007, this matter was re-assigned to the Honorable Richard A. Schell, United States District Judge.

On September 23, 2008, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (Dkt. 626). The petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician; (3) Defendant shall refrain from any unlawful use of a controlled substance, and Defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer; (4) Defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons; (5) Defendant shall participate in a program of testing and treatment for drug abuse, as directed by the probation officer, until such time as Defendant is released from the program by the probation officer.

The petition and amended petition allege that Defendant committed the following violations: (1) Defendant was arrested by Denton Police Department on June 12, 2008 for Public Intoxication and Theft of Services Under \$20, Class C, Misdemeanors, was released on surety bond, and warrants were issued for Defendant's failure to appear; (2) Defendant submitted a urine specimen at Sharp Focus Centers, Denton, Texas, on December 14, 2007, which tested positive for cocaine, Defendant submitted a urine specimen on August 7, 2008, which tested positive for cocaine, and Defendant admitted verbally and in writing to said drug use; (3) Defendant has failed to maintain full time employment since the onset of this term of supervised release; and (4) Defendant failed to report for drug testing at Sharp Focus Centers on June 9, 23, 26, July 1, 14, 19, 23, 29, August 4, 12, 18, and 26, 2008, as directed.

Prior to the Government putting on its case, the Defendant entered a plea of true to the alleged violations. Defendant also waived allocution before a district judge. At the hearing, the Court recommended that Defendant's supervised release be revoked based on those violations.

RECOMMENDATION

Having heard the argument of counsel, the Court recommends that the District Court revoke the Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of ten (10) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in the appropriate Denton County facilities.

SIGNED this 10 day of Oct, 2008.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE